

## Internal Revenue Service

Number: **201043003**

Release Date: 10/29/2010

Index Number: 1361.05-00, 9100.31-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-104581-10

Date:

July 27, 2010

### Legend

Parent =

Subsidiary =

State1 =

State2 =

Date1 =

Date2 =

Date3 =

Date4 =

Dear :

This responds to the letter dated January 26, 2010, submitted on behalf of Parent by its authorized representatives, requesting relief under § 301.9100-3 of the Procedure and Administration Regulations that Parent be granted an extension of time to elect to treat Subsidiary as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code (Code).

### Facts

Parent was incorporated under State1 law on Date1. An election to treat Parent as an S corporation was made effective on Date2. On Date3, Parent acquired the stock of Subsidiary, a State2 corporation. Parent intended to elect to treat Subsidiary as a QSub effective the following day, Date4, and to file a § 338 election, however, Parent failed to timely file the proper elections. Parent filed returns consistent with Subsidiary being treated as a disregarded entity. Parent represents that, separate from this ruling request, it is seeking an automatic extension of time to make a § 338 election.

### Law

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides that the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of the Code — (i) a corporation which is a QSub shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) provides that, for purposes of § 1361(b)(3), the term “qualified subchapter S subsidiary” means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if — (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner for making the QSub election. A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center.

Section 1.1361-4(a)(2) provides that if an S corporation makes a valid QSub election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the S corporation.

Section 1.1361-4(b)(4) provides that an S corporation that makes a qualified stock purchase of a target may make an election under § 338 with respect to the acquisition if it meets the requirements for the election, and may make a QSub election with respect to the target. If an S corporation makes an election under § 338 with respect to a subsidiary acquired in a qualified stock purchase, a QSub election made with respect to that subsidiary is not effective before the day after the acquisition date (within the meaning of § 338(h)(2)). If the QSub election is effective on the day after the acquisition date, the liquidation under § 1.1361-4(a)(2) occurs immediately after the deemed asset purchase by the new target corporation under § 338.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and that (2) granting relief will not prejudice the interests of the Government.

### Conclusion

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Parent is granted an extension of time of 120 days from the date of this letter to make an election to treat Subsidiary as a QSub, effective Date4. The election should be made by filing Form 8869 with the appropriate service center, and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Provided that Parent receives the requested automatic extension of time in which to file a § 338 election with respect to this transaction and makes such election, the deemed liquidation of Subsidiary into Parent will be treated as occurring immediately after the deemed purchase of Subsidiary's assets on Date3 in accordance with § 1.1361-4.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether Parent is eligible

to be an S corporation, whether Parent made a timely and valid election to be an S corporation, whether Subsidiary is a valid QSub, or whether Parent may make a § 338 election with respect to Subsidiary.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to Parent's authorized representative.

Sincerely,

/s/

Tara P. Volungis  
Acting Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy for § 6110 purposes  
Copy of this letter